IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 130 OF 2004

Mr.Hitendra Chotalal Patel. ... Appellant.

V/s.

Smt.Pushpa Hitendra Patel. ... Respondent.

P.N.Kulkarni for the appellant.

Ms.Nisha Valani for the respondent.

CORAM : S.B.MHASE AND R.S.MOHITE, JJ.

DATED : 2nd November 2004.

P.C. :

. Heard Mr.Kulkarni, learned counsel for the appellant.

2. The Family Court has returned the Petition No.A-610/1997 to the petitioner (appellant herein) on the ground that Family Court at Bandra has no jurisdiction to entertain the said petition.

3. The appellant is husband, seeking decree of divorce and for the said purpose Petition No.A-610/1997 was filed by appellant in Family Court at Bandra. The learned counsel for the appellant submitted that at the time of filing of petition, the appellant was residing at Mahim and, according to him, husband and wife both were

residing at Mahim and, therefore, the Family Court at Bandra has jurisdiction.

4. In order to show that there is jurisdiction to the Family Court at Bandra, learned counsel for the appellant relied upon the averments made in para-5 of the petition, which are as under:

> 5. The Petitioner submits that on the request and desire of the Respondent and her parents the Petitioner took the room on Leave and Licence basis at Mahim, at above address. Then the Petitioner brought the Respondent on 18th November, 1994 at Mahim and she was residing there with her son. The Petitioner submits that on 21st November, 1994 the Respondent left the house with her son and went to Surat, when the Petitioner was on duty at Khar Telephone Exchange, without the permission and consent of the Petitioner.

5. The case made out by the respondent wife is that she last resided with the appellant at Nala Sopara, and she has denied that she stayed at any point of time at Mahim.

6. The evidence in the matter was recorded and it was the duty and obligation of the appellant to prove by leading proper evidence that appellant and respondent last resided together at Mahim. However, in cross-examination, the appellant has admitted that he does know any neighbour of the Mahim residence. He further admitted that he does not know from whom the said house was taken on leave and licence and whether the said person is still available. He has stated that he did not know the witnesses on leave and licence agreement. On the contrary, there is a letter dated 4th October, 1997 produced at Exh.19 which was sent by the appellant to the Police Station, Nala Sopara. It is stated in the said letter that since last 5-6 years the appellant is residing at Nala Sopara and, thus, the version of the respondent wife has been established by the appellant himself.

7. Thus, what we find is that on assessment of the evidence, the trial Court has come to the conclusion that the appellant and respondent last resided together at Nala Sopara and not at Mahim. This is a finding of fact which has been recorded by the trial Court. Nothing is pointed out to us by learned counsel for the appellant to the effect that the said finding of fact is erroneous and/or perverse one. In the absence of such thing, what

we find is that the point of jurisdiction has been rightly dealt with by the trial Court and the petition is rightly returned to the petitioner. We, therefore, do not find any reason to interfere with the impugned order.

. Appeal is, therefore, dismissed.

. C.C. expedited.

(R.S.MOHITE, J.) **(S.B.MHASE, J.)**